

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT WAYNE ANNABEL,

Plaintiff,

v.

PATRICIA CARUSO, et al.,

Defendants.

Case No. 1:09-cv-176

HON. JANET T. NEFF

/

OPINION AND ORDER

Pending before the Court in this closed prisoner civil rights action are two post-dismissal motions filed by Plaintiff: Plaintiff's Motion "to enforce and/or for order of contempt" (ECF No. 234) and Plaintiff's Rule 60(b) Motion (ECF No. 248). Defendants filed a response to Plaintiff's Motion "to enforce" (ECF No. 243). The motion was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending Plaintiff's motion be denied (ECF No. 244). Plaintiff filed a reply to Defendants' response, which was received after the Report and Recommendation was filed (ECF No. 245). Plaintiff also filed an objection to the Report and Recommendation (ECF No. 247). Defendants filed a response to Plaintiff's Rule 60(b) Motion (ECF No. 251), and Plaintiff filed a reply (ECF No. 252). All have been considered by this Court.

In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order. The Court also denies Plaintiff's Rule 60(b) Motion.

I. Objection to Report and Recommendation

Regarding Plaintiff's objection to the Report and Recommendation, Plaintiff expresses his general dissatisfaction with the 2012 settlement conference and states accusations of corruption in the judicial system and a conspiracy between the Court and Defendants to force him to attend a fraudulent settlement conference with the Magistrate Judge (ECF No. 247 at PageID.1392). However, Plaintiff fails to address the factual and legal basis upon which the Magistrate Judge recommends denial of Plaintiff's motion. Plaintiff fails to demonstrate any error in the Magistrate Judge's determination that the Court lacks jurisdiction to enforce the settlement agreement. Therefore, this objection is denied.

II. Rule 60(b) Motion

Additionally, Plaintiff filed a Rule 60(b) Motion (ECF No. 248) under FED. R. CIV. P. 60(b)(3), claiming fraud, misrepresentation, or misconduct by an opposing party. While Plaintiff mentions Rule 60(b)(4) and Rule 60(b)(6), his motion is appropriately considered under Rule 60(b)(3), since his allegations of misrepresentation at the settlement conference and a fraudulent order are the basis for his argument.

Plaintiff's motion is untimely, as he seeks relief under Rule 60(b)(3) from an order of dismissal, which was issued July 19, 2012. Pursuant to Rule 60(c), this motion must be made no more than one year after the entry of the order. The motion, filed five years after the order of dismissal, is thus properly denied as untimely.

Even if the motion were timely, it does not survive on the merits. Plaintiff's brief in support of his motion is laden with conclusory allegations without factual basis. According to exhibits submitted by Defendants, Plaintiff did not receive Passover meals initially in 2017 due to his failure to submit the required request, per MDOC policy, as he had done in the past (ECF No. 243,

Ex. 4). Plaintiff was provided meals as soon as possible after he made his request known (*id*). In any event, Plaintiff's mere conclusory allegations do not justify relief from the order of dismissal.

III. Conclusion

This Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objection (ECF No. 247) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 244) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion "to enforce and/or for order of contempt" (ECF No. 234) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Rule 60(b) Motion (ECF No. 248) is DENIED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: November 22, 2017

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge